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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/728,430

12/08/2003

Bruce C. Doan

JAM 948

9427

34356 7590 03/14/2007  
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EXAMINER

BERRY, WILLIE WENDELL JR

ART UNIT

PAPER NUMBER

3643

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/14/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/728,430	Applicant(s) DOAN, BRUCE C.	
	Examiner Willie W. Berry, Jr.	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-8, 10-12, 14 and 15 is/are rejected.
- 7) ☒ Claim(s) 4, 9 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                                |                                                                                         |
|--------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                           | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/03</u> . | 6) <input type="checkbox"/> Other: _____                                                |

## DETAILED ACTION

### *Drawings*

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "flexible hose being inserted into the bottle opening" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 103***

Claims 1-3, 7, 8 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over patent no. 5,009,028 to Lorenzana et al. in view of patent no. 6,439,521 to Wilson and patent no. 5,857,484 to Davidian. For the purpose of the foregoing rejection the examiner has taken the position, in light of applicant's drawings, that his flexible tube is indirectly connected to the bottle instead of being directly connected as claimed by applicant.

Lorenzana et al. discloses a Christmas tree water feeder comprising: a bottle (21) defining a reservoir, an elongated flexible hose (15) and a stand (13) having an annular portion.

Lorenzana et al. does not disclose an elongated rigid tube, an adjustable stand, fasteners and a guide member.

Davidian teaches it is known to have an elongated rigid tube (14 and 58) and guide member (62) in a liquid supply device and valve structure.

Wilson et al. teaches it is known to have an adjustable stand (40) and fasteners (44, 58 and 60) in a support apparatus for a stroller.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Lorenzana et al. with the teachings of Davidian and Wilson et al. for the purpose of providing a means to retain a supply tube to a basin and to adjust the height of a fluid container as stated by Davidian in his ABSTRACT and Wilson et al. in col. 1 and 2, lines 65-66 and 1-2 respectively.

Art Unit: 3643

Claims 5, 6, 10, 11, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lorenzana et al. in view of Davidian and Wilson et al. as applied to claims 1 and 7 above, and further in view of design patent no. 378,266 to Buehler.

Lorenzana et al. in view of Davidian and Wilson et al. disclose as discussed above.

Lorenzana et al. in view of Davidian and Wilson et al. does not disclose the rubber seal and cap.

Buehler teaches it is known to have a seal (cap shown in fig. 1) and cap (not numbered, but shown in fig. 1) in a combined automatic Christmas tree waterer and cover therefor.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Lorenzana et al. in view of Davidian and Wilson et al. with teachings of Buehler for the purpose of substituting one tube attachment means for another.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the seal of rubber, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. See also *Ballas Liquidating Co. v. Allied industries of Kansas, Inc.* (DC Kans) 205 USPQ 331.

***Allowable Subject Matter***

Claims 4, 9 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Willie W. Berry, Jr. whose telephone number is (571) 272-8974. The examiner can normally be reached on 9:00am to 5:30pm Mon. - Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Wbj.  
Wbj.

  
PETER M. POON  
SUPERVISORY PATENT EXAMINER

3/14/07